IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.490 OF 2007
WITH
CIVIL APPLICATION NO.832 OF 2007

1.Ramu Shivappa Agalgave
(since deceased) through LRs
1-A.Baburao R.Agalgave & Ors. .. Appellants.
Vs.
1.Imam Kashim Pathan & Ors. .. Respondents.

Ms.Leena Patil for the appellants.
Mr.Sandesh D.Patil for respondent no.2B and 2C.

CORAM : D.B.BHOSALE, J.
DATED : 24TH OCTOBER, 2007.

P.C.:

. Heard learned counsel for the parties.

2. This second appeal is by the original plaintiff. The appellants had filed a suit for declaration that a decree passed in Regular Civil Suit No.80 of 1967 and confirmed in second appeal No.749 of 1970 is illegal, against public policy and is not binding on them. It appears that the appellants were not party in the earlier round of litigation. The earlier suit was filed by one Ramchandra Koli, defendant no.2 in the present suit, against Imam Pathan and Kallappa S.Agalgave, defendant nos.1 and 3 in the present suit, for specific performance of an agreement. That suit was

decreed and the decree was confirmed upto this court. Ms.Patil, learned counsel for the appellants submits that an issue as to whether the appellants/plaintiffs are the tenants in the suit property has not been considered by the courts below. The trial court ought to have framed the issue of tenancy and referred it to the tenancy authorities under section 85A of the Bombay Tenancy and Agricultural Lands Act. I perused the judgments of the courts below and more particularly paragraph 17 of the appeal court's judgment dated 9.4.2007. The appellate court has made reference to writ petition No.2609 of 1984 decided on 7.1.1992. That writ petition was arising from the orders passed by the trial Court rejecting the application seeking reference under section 85A of the Bombay Tenancy and Agricultural Lands Act. This court in writ petition confirmed the order rejecting the prayer for reference. In my opinion, there is absolutely no merit in the second appeal. No subtantial question of law is either raised or involved in this appeal. In the circumstances the second appeal is dismissed. Consequently, the civil application is also disposed of.

(D.B.BHOSALE, J.)